

FILED

MAY 14 1991

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
BY Plaintiff,

v.

H.K. PORTER COMPANY,
Defendant.

CIVIL ACTION NO.
89-0704 LKK-JFM

CONSENT DECREE

INTRODUCTION

1. On May 18, 1989, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed the Complaint in this case against Defendants Great Lakes Development Co., Inc., Basic Resources, Inc., George Reed, Inc. and H.K. Porter Company pursuant to Section 107 of the Comprehensive Environmental

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1 Response, Compensation and Liability Act of 1980 ("CERCLA"),
2 42 U.S.C. § 9607, as amended, to recover costs incurred by
3 Plaintiff pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.
4 These costs were incurred by the United States as necessary to
5 protect public health or welfare or the environment in
6 responding to the release or threat of release of hazardous
7 substances into the environment from the Copper Cove Village
8 Asbestos Site ("the Site"). Copper Cove Village is located
9 approximately four miles southeast of Copperopolis, California
10 off of O'Byrnes Ferry Road in Calaveras County, California,
11 within the Eastern District of California.

12 2. On April 10, 1990, a Consent Decree representing
13 settlement between the United States, Great Lakes Development
14 Co., Inc., Centex Corporation, Basic Resources, Inc., and
15 George Reed, Inc. was entered with the Court. Under the April
16 10, 1990 Consent Decree, the United States and the Settling
17 Defendants reserved all their rights against H.K. Porter
18 Company, which elected not to participate in the Consent
19 Decree.

20 3. The Plaintiff and Defendant H.K. Porter Company
21 ("H.K. Porter") agree that it is in their interest, the public
22 interest, and consistent with the National Contingency Plan
23 ("NCP"), 40 C.F.R. Part 300, to avoid the expense of further
24 litigation and enter into this Consent Decree.

25 4. The Plaintiff and H.K. Porter hereby agree that
26 the payment and acceptance of the settlement sum and the making

1 and entry of this Consent Decree are the result of compromise
2 and settlement and are entered into in good faith and shall not
3 for any purpose be considered an admission of liability or
4 responsibility concerning any of the matters alleged in the
5 Complaint. By signing this Consent Decree, H.K. Porter does
6 not admit, accept or acknowledge, and specifically denies any
7 liability or responsibility with respect to: (1) the
8 conditions at or arising from the Site, (2) any matter arising
9 out of or relating directly or indirectly to the conditions at
10 or arising from the Site, or (3) any response costs which have
11 been or may have been incurred by plaintiff or any other person
12 or entity.

13 ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
14 as follows:

15 JURISDICTION AND VENUE

16 5. This Court has jurisdiction over this matter and
17 the parties hereto pursuant to 28 U.S.C. § 1345 and 42 U.S.C.
18 §§ 9607(a), 9613(b).

19 6. Venue is proper in this district pursuant to 28
20 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b).

21 II. PARTIES BOUND

22 7. The Consent Decree shall be binding upon and inure
23 to the benefit of H.K. Porter, including its successors,
24 predecessors, former and present subsidiaries, parent
25 corporations, affiliated and related companies, divisions,
26 assigns and all respective officers, directors, employees,

1 stockholders and agents, and upon the United States on behalf
2 of EPA. Each undersigned representative of H.K. Porter
3 certifies that he or she is fully authorized to enter into the
4 terms and conditions of this Consent Decree and to legally bind
5 H.K. Porter to this Consent Decree.

6 **III. DEFINITIONS**

7 8. For purposes of this Consent Decree, certain terms
8 are defined as follows:

9 A. The "Site" means the Copper Cove Village
10 Asbestos Site located approximately four miles southeast of
11 Copperopolis, California in Calaveras County, which is a
12 "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C.
13 § 9601(9), from which a "release" as defined in Section 101(22)
14 of CERCLA, 42 U.S.C. § 9601(22), has occurred.

15 B. "Defendant" means H.K. Porter Company and its
16 successors, predecessors, former and present subsidiaries,
17 parent corporations, affiliated and related companies,
18 divisions, assigns and all its officers, directors, employees,
19 stockholders and agents.

20 C. "Response Costs" shall mean those costs
21 incurred relative to the Site by the United States pursuant to
22 CERCLA and not inconsistent with the National Contingency Plan
23 and shall include but are not limited to all oversight,
24 administrative, enforcement, removal, investigative and
25 remedial or other direct or indirect costs.

IV. REIMBURSEMENT OF COSTS

9. No later than thirty (30) days after the date on which this Consent Decree is entered with the Court, H.K. Porter agrees to and shall pay to the Hazardous Substance Superfund the sum of \$40,000 toward payment of the Response Costs as referenced above.

10. The payment required under Paragraph 9 above shall be made in the form of a certified or cashier's check, and shall be made payable to the "EPA Hazardous Substance Superfund." Each payment shall make reference to United States v. Great Lakes Development Co., Inc. et al., Department of Justice File No. 90-11-2-404, EPA Site No. 9TB9, and shall contain the name and complete address of H.K. Porter. The check must be delivered to the plaintiff, as scheduled above, at the following address:

U.S. Environmental Protection Agency, Region IX
ATTN: Superfund Accounting
P.O. Box 360863M
Pittsburgh, Pennsylvania 15251

11. At the time of transmittal of payment to the address in Paragraph 10 above, Defendant shall send copies of its check and transmittal letter to:

Nancy J. Marvel
Regional Counsel, Regional IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
ATTN: Tom Mintz

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Attn: William A. Weinischke

V. COVENANT NOT TO SUE

12. The United States covenants not to seek further reimbursement from H.K. Porter or to sue Porter for any and all Response Costs incurred prior to and including the date of entry of this Consent Decree.

13. Notwithstanding any other provision in this Consent Decree, the covenant not to sue in Paragraph 12 above shall not relieve H.K. Porter of its obligation to comply with the requirements set forth in this Consent Decree.

14. H.K. Porter covenants not to sue the United States for any and all claims arising out of the Response Costs incurred in responding to the release or threat of release of hazardous substances at the Site, claims related to or arising from actions taken by the United States at the Site, including any direct or indirect claims for reimbursement from the Hazardous Substance Superfund. Nothing herein shall be deemed to constitute a preauthorization of a claim under Sections 111 or 112 of CERCLA and 40 C.F.R. § 300.25(d).

15. Nothing in this Consent Decree is intended as a covenant not to sue or a release from liability for any person or entity not bound to this Consent Decree as described in Section II, paragraph seven above.

16. The terms of this Consent Decree shall not inure to the benefit of, nor be enforceable by, any person or entity not bound to this Consent Decree.

VI. RESERVATION OF RIGHTS

17. Plaintiff and H.K. Porter reserve all claims, demands and causes of action, past or future, judicial or administrative, in law or in equity, that any of them may have or which may yet accrue against each other with respect to claims not specifically alleged in the Complaint. All claims or defenses which Plaintiff or H.K. Porter may have, except as otherwise provided in the contribution protection and covenant not to sue provisions contained in the April 10, 1990 Consent Decree, against any other person or entity not bound to the Consent Decree, or the April 10, 1990 Consent Decree, including but not limited to claims for contribution pursuant to Section 113(f) of CERCLA, are expressly reserved. Nothing contained herein shall in any way limit or restrict the response authorities of the United States under applicable law, including but not limited to Sections 104 and 106 of CERCLA, or the ability to recover, pursuant to Section 107 of CERCLA, or other applicable law, future response costs at this Site.

18. Subject to the terms and conditions of this Consent Decree, Plaintiff reserves the right to take legal or administrative action to enforce other federal environmental laws related to matters other than those alleged in the Complaint.

19. By signing this Consent Decree, subject to Paragraph 14 above, H.K. Porter reserves and does not waive

1 any rights, claims or defenses to any action brought, except to
2 enforce this decree.

3 VII. CONTRIBUTION PROTECTION

4 20. With regard to claims for contribution against
5 Defendant for matters addressed in this Consent Decree, the
6 Parties hereto agree that the Defendant is entitled, as of the
7 effective date of this Consent Decree, to such protection from
8 contribution actions or claims as is provided by CERCLA Section
9 113(f)(2), 42 U.S.C. § 9613(f)(2).

10 VIII. SEVERABILITY

11 21. If any terms or conditions of this Consent Decree
12 or the application of this Consent Decree to any party or
13 circumstances are held by any judicial authority to be
14 unenforceable or contrary to public policy, the application of
15 such terms or conditions to other parties or circumstances and
16 the remainder of the Consent Decree shall remain binding on
17 H.K. Porter, and H.K. Porter shall remain liable.

18 IX. NOTIFICATION

19 22. If H.K. Porter institutes any suit or claim for
20 contribution against a non-settling party or other person
21 regarding the matters covered in this Consent Decree, it agrees
22 to notify EPA and the United States Department of Justice at
23 the time of filing of such suit or claim. Notice shall be made
24 by registered mail sent to:

25 William A. Weinischke
26 Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

1 P.O. Box 7611, Ben Franklin Station
2 Washington, D.C. 20044

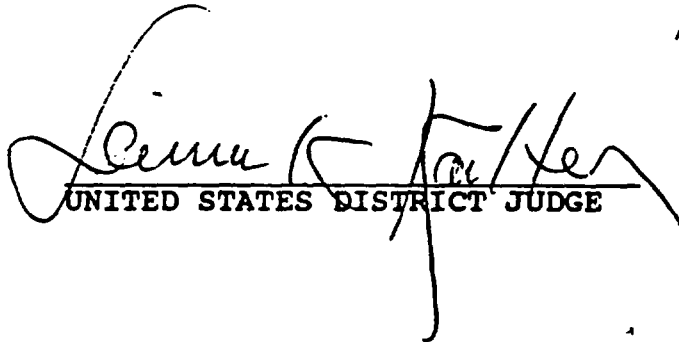
3 and

4 Tom Mintz
5 Office of Regional Counsel
6 Environmental Protection Agency, REgion IX
7 75 Hawthorne Street
8 San Francisco, California 94105

9 X. TERMINATION OF CONSENT DECREE

10 23. This Consent Decree shall be terminated upon
11 Plaintiff's certification to the Court that payment has been
12 made and received in accordance with the terms of this Cosnent
13 Decree. The termination of this consent Decree shall not
14 affect the Covenant Not To Sue, including all reservations
15 pertaining to the Covenant Not To Sue, as set forth in Section
16 V, paragraphs 12-16, above.

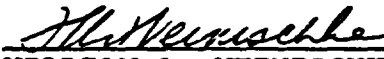
17 This Decree is entered on this 13 day of May,
18 1991.

19 
20 UNITED STATES DISTRICT JUDGE
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26

1
2 The undersigned agree to the foregoing Consent Decree
3 and agree that, upon filing of a motion for entry, the Consent
4 Decree may be entered.
5


6 FOR THE PLAINTIFF:
7 UNITED STATES OF AMERICA

8 
9 RICHARD B. STEWART
10 Assistant Attorney General
11 Environment & Natural Resources Division

12 
13 WILLIAM A. WEINISCHKE
14 Trial Attorney
15 Environmental Enforcement Section
16 U. S. Department of Justice
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21 RICHARD H. JENKINS
22 United States Attorney
23 Eastern District of California

24 EDWARD KNAPP
25 Assistant United States Attorney
26 3305 Federal Building
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27 
28 DANIEL W. MCGOVERN
29 Regional Administrator
30 Environmental Protection Agency
31 Region IX

OF COUNSEL:

Office of Regional Counsel
United States Environmental
Protection Agency -- Region IX
1235 Mission Street
San Francisco, CA 94103

FOR H.K. PORTER COMPANY, INC.

By: 

Lawrence E. Moncrief
Vice President and General Counsel

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On May 9, 1991, she served a copy of the NOTICE OF LODGING and CONSENT DECREE by placing said copies in a postage paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the United States mail at Sacramento, California.

Raymond C. Marshall
McCutchen, Doyle, Brown & Enersen
Three Embarcadero Center
San Francisco, CA 94111

Ronald L. Kuis
Kirkpatrick & Lockhart
1500 Oliver Building
Pittsburgh, PA 15222-5739

Rae L. Fournier
RAE FOURNIER

Ronald is
Kirkpatrick & Lockhart
1500 Oliver Bldg
Pittsburg, PA 15222-5739

Jack L. Wagner, Clerk

BY:


Deputy Clerk